



**FIRST-TIER TRIBUNAL  
PROPERTY CHAMBER  
(RESIDENTIAL PROPERTY)**

<b>Case Reference</b>	<b>: LON/00BK/LDC/2021/0283</b>
<b>Property</b>	<b>: York House, York Street &amp; 39 Upper Montague Street, London, W1H1FR</b>
<b>Applicant</b>	<b>: York House ( Upper Montague Street) Ltd</b>
<b>Representative</b>	<b>: Russell Cooke LLP</b>
<b>Respondent</b>	<b>: The leaseholders of York House</b>
<b>Representative</b>	<b>: In person at present</b>
<b>Type of Application</b>	<b>: Application for dispensation under s 20ZA Landlord and Tenant Act 1985</b>
<b>Tribunal Member</b>	<b>: Judge Shepherd Chris Gowman MCIEH</b>
<b>Date of Decision</b>	<b>: 21st December 2021</b>

**DECISION**

**The application for dispensation is approved without condition.**

1. In this case the Applicants, York House (Upper Montague Street) Limited (“The Applicants”) seek dispensation from the consultation requirements under section 20 of the Landlord and Tenant Act 1985. The application is made pursuant to section 20 ZA of the same act.
2. The Applicants are the freehold owners of a building at York House, York Street & 39 Upper Montague Street, London, W1H1FR (“The building”). The building is a single block with 34 residential flats all let on long leases.
3. In their application the Applicants state that in the course of carrying out cyclical refurbishment works (which were subject to a s.20 consultation) it was identified that structural steel beams at high levels in the building were eroded and required removal and replacement on three elevations. This created a risk from falling masonry and structural collapse. Accordingly the Applicants sought dispensation in order to get on with these urgent works.
4. The Applicants’ application is supported by considerable evidence from surveyors and structural engineers, including a letter from Hallas and Co West dated 24<sup>th</sup> September 2021, a letter from Mason Navarro Pledge dated 24<sup>th</sup> September 2021 which stated that urgent works were required, a site inspection report carried out by Mason Navarro Pledge with compelling photographs, a report by Hallas & Co on the structural repairs needed dated 13<sup>th</sup> December 2021 and a witness statement from Simon Daws of HMP Group who manage the premises on behalf of the Applicants. The works proposed to rectify this situation are in addition to the existing s.20 works. Informal and truncated consultation has been carried with the leaseholders, including a notice of intention to carry out works on 1<sup>st</sup> October 2021 and a meeting with residents on 29<sup>th</sup> November 2021.

5. A proportion of leaseholders support the dispensation application. Concerns have been raised by a minority about how the works will be funded and whether the reserve fund will be used. This is not an issue for the Tribunal at this stage. Leaseholders are reminded that even if the Tribunal gives dispensation from the consultation requirements this does not preclude the leaseholders from bringing a challenge to the reasonableness and payability of the costs incurred in carrying out these urgent works pursuant to s27A Landlord and Tenant Act 1985.

## **Relevant law**

*Landlord and Tenant Act 1985, s.20ZA*

*20ZA Consultation requirements: supplementary*

*(1) Where an application is made to [the appropriate tribunal for a determination to dispense with all or any of the consultation requirements in relation to any qualifying works or qualifying long term agreement, the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements.*

*(2) In section 20 and this section—*

*“qualifying works” means works on a building or any other premises, and*

*“qualifying long term agreement” means (subject to subsection (3)) an agreement entered into, by or on behalf of the landlord or a superior landlord, for a term of more than twelve months.*

*(3) The Secretary of State may by regulations provide that an agreement is not a qualifying long term agreement—*

*(a) if it is an agreement of a description prescribed by the regulations, or*

*(b) in any circumstances so prescribed.*

*(4) In section 20 and this section “the*

*consultation requirements” means requirements prescribed by regulations made by the Secretary of State.*

*(5) Regulations under subsection (4) may in particular include provision requiring the landlord—*

*(a) to provide details of proposed works or agreements to tenants or the recognised tenants' association representing them,*

*(b) to obtain estimates for proposed works or agreements,*

*(c) to invite tenants or the recognised tenants' association to propose the names of persons from whom the landlord should try to obtain other estimates,*

*(d) to have regard to observations made by tenants or the recognised tenants' association in relation to proposed works or agreements and estimates, and*

*(e) to give reasons in prescribed circumstances for carrying out works or entering into agreements.*

*(6) Regulations under section 20 or this section—*

*(a) may make provision generally or only in relation to specific cases, and*

*(b) may make different provision for different purposes.*

*(7) Regulations under section 20 or this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.*

## **Daejan**

6. In *Daejan Investments v Benson* [2013] UKSC 14, the landlord was the freehold owner of a building comprised of shops and seven flats, five of which were held by the tenants under long leases which provided for the payment of service charges. The landlord gave the tenants notice of its intention to carry out major works to the building. It obtained four priced tenders for the work, each in excess of £400,000, but then proceeded to award the work to one of the tenderers without having given tenants a summary of the observations it had received in relation to the proposed works or having made the estimates available for inspection. The tenants applied to a leasehold valuation tribunal under section 27A of the Landlord and Tenant Act 1985, as inserted, for a determination as to the amount of service charge which was payable, contending inter alia that the failure of the landlord to provide a summary of the observations or to make the estimates available for inspection was in breach of the statutory consultation requirements in paragraph 4(5) of Schedule 4 to the Service Charges (Consultation Requirements) (England)

Regulations 2003 so as to limit recovery from the tenants to £250 per tenant, as specified in section 20 of the 1985 Act and regulation 6 of the 2003 Regulations in cases where a landlord had neither met, nor been exempted from, the statutory consultation requirements. The landlord applied to the tribunal under section 20(1) of the Act for an order that the paragraph 4(5) consultation requirements be dispensed with, and proposed a deduction of £50,000 from the cost of the works as compensation for any prejudice suffered by the tenants, which offer they refused. The tribunal held that the breach of the consultation requirements had caused significant prejudice to the tenants, that the proposed deduction did not alter the existence of that prejudice, and that it was not reasonable within section 20ZA(1) of the Act, as inserted, to dispense with the consultation requirements. The Upper Tribunal (Lands Chamber) dismissed the landlord's appeal and the Court of Appeal upheld the Upper Tribunal's decision.

7. The Supreme Court, allowing the appeal (Lord Hope of Craighead DPSC and Lord Wilson JSC dissenting), held that the purpose of a landlord's obligation to consult tenants in advance of qualifying works, set out in the Landlord and Tenant Act 1985 (as amended) and the Service Charges (Consultation Requirements) (England) Regulations 2003, was to ensure that tenants were protected from paying for inappropriate works or from paying more than would be appropriate; that adherence to those requirements was not an end in itself, nor was the dispensing jurisdiction under section 20ZA(1) of the 1985 Act a punitive or exemplary exercise; that, therefore, on a landlord's application for dispensation under section 20ZA(1) the question for the leasehold valuation tribunal was the extent, if any, to which the tenants had been prejudiced in either of those respects by the landlord's failure to comply; that neither the gravity of the landlord's failure to comply nor the degree of its culpability nor its nature nor the financial consequences for the landlord of failure to obtain dispensation was a relevant consideration for the tribunal; that the tribunal could grant a dispensation on such terms as it thought fit, provided that they were appropriate in their nature and effect, including terms as to costs; that the factual burden lay on the tenants to identify any prejudice

which they claimed they would not have suffered had the consultation requirements been fully complied with but would suffer if an unconditional dispensation were granted; that once a credible case for prejudice had been shown the tribunal would look to the landlord to rebut it, failing which it should, in the absence of good reason to the contrary, require the landlord to reduce the amount claimed as service charges to compensate the tenants fully for that prejudice; and that, accordingly, since the landlord's offer had exceeded any possible prejudice which, on such evidence as had been before the tribunal, the tenants would have suffered were an unqualified dispensation to have been granted, the tribunal should have granted a dispensation on terms that the cost of the works be reduced by the amount of the offer and that the landlord pay the tenants' reasonable costs, and dispensation would now be granted on such terms. Per Lord Neuberger of Abbotsbury PSC, Lord Clarke of Stone-cum-Ebony and Lord Sumption JJSC. (i) Where the extent, quality and cost of the works were unaffected by the landlord's failure to comply with the consultation requirements an unconditional dispensation should normally be granted (post, para 45). (ii) Any concern that a landlord could buy its way out of having failed to comply with the consultation requirements is answered by the significant disadvantages which it would face if it fails to comply with the requirements. The landlord would have to pay its own costs of an application to the leasehold valuation tribunal for a dispensation, to pay the tenants' reasonable costs in connection of investigating and challenging that application, and to accord the tenants a reduction to compensate fully for any relevant prejudice, knowing that the tribunal would adopt a sympathetic (albeit not unrealistically sympathetic) attitude to the tenants on that issue (post, para 73).

## **Determination**

8. The Tribunal will allow the application for dispensation in this case. It is clear that the building is presently unsafe with a risk of collapse and injury to

passers -by. It is entirely appropriate that the Applicants should seek to carry out the works to make the building safe as soon as possible.

9. There is no evidence of prejudice suffered by the leaseholders in this case. The leaseholders preserve the right to challenge the cost, standard of works and recoverability of costs pursuant to s.27A Landlord and Tenant Act 1985.
  
10. The Tribunal accepts that the Applicants have sought to keep the leaseholders informed of their plans as far as possible.
  
11. Accordingly, the Tribunal has no hesitation in confirming that dispensation should be given unconditionally in this case.

**Judge Shepherd**

**22nd December 2021**

#### ANNEX - RIGHTS OF APPEAL Appealing against the tribunal's decisions

1. A written application for permission must be made to the First-tier Tribunal at the Regional tribunal office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional tribunal office within 28 days after the date this decision is sent to the parties.
3. If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
4. The application for permission to appeal must state the grounds of appeal, and state the result the party making the application is seeking. All applications for permission to appeal will be considered on the papers
5. Any application to stay the effect of the decision must be made at the same time as the application for permission to appeal.